

**FILED**

**NOT FOR PUBLICATION**

**FEB 21 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

FILOGONIA ROSA ELIA NOYOLA  
RODRIQUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75760

Agency No. A79-281-582

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Filogonia Rosa Elia Noyola Rodriguez, a native and citizen of Mexico,  
petitions for review of the Board of Immigration Appeals' ("BIA") decision  
dismissing her appeal from an immigration judge's ("IJ") order pretermittting her

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

application for cancellation of removal on the ground that she was statutorily precluded from demonstrating good moral character. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Ramos v. INS*, 246 F.3d 1264, 1266 (9th Cir. 2001), and we grant the petition for review and remand for further proceedings.

Although substantial evidence supports the agency's determination that petitioner gave false testimony regarding an arrest in 1988, the government failed to meet its burden of offering "clear, unequivocal, and convincing evidence which does not leave the issue in doubt" that petitioner made this misrepresentation with the "subjective intent of obtaining immigration benefits." *Kungys v. United States*, 485 U.S. 759, 780, 781 (1988) (internal quotations omitted). While the BIA stated that it agreed with the IJ's conclusion, the IJ did not make a finding regarding petitioner's subjective intent to obtain an immigration benefit. We therefore grant the petition for review and, in accordance with *INS v. Ventura*, 537 U.S. 12 (2002) (per curiam), remand so that the agency may consider petitioner's application for cancellation of removal or voluntary departure in the alternative.

Because we grant the petition for the reasons stated above, we do not consider petitioner's due process contentions.

**PETITION FOR REVIEW GRANTED; REMANDED**